

**THIS OPINION WAS NOT WRITTEN FOR PUBLICATION**

The opinion in support of the decision being entered today  
(1) was not written for publication in a law journal and  
(2) is not binding precedent of the Board.

Paper No. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

*Ex parte* DINESH M. BHAT

---

Appeal No. 94-0605  
Application 07/807,750<sup>1</sup>

---

HEARD: June 9, 1997

---

Before JOHN D. SMITH, GARRIS and WARREN, *Administrative Patent Judges*.

WARREN, *Administrative Patent Judge*.

*On Request For Reconsideration*

Appellant requests reconsideration of our decision dated June 30, 1997, wherein we affirmed the decision of the examiner based on his rejection of appealed claims 93 through 138 under 35 U.S.C. ' 103 as being unpatentable over Gatward.

We have carefully considered appellant's request but are unconvinced of error in our decision. Thus, we decline to make any changes in our prior decision for the reasons which follow.

---

<sup>1</sup> Application for patent filed December 17, 1991. According to applicant, this application is a continuation of application for patent 07/598,995, filed October 10, 1990.

We are not persuaded that our decision is in error by reason of our finding that "Gatward employs a 'Denver cell' ... which is among the aerators listed in appellant's specification (page 13) as capable of generating a stable, free draining foam" (original decision, page 19, lines 1-3; see request, page 2). We observe that the examiner also found that Gatward used a "Denver frothing cell" (answer, page 2), and thus this question of fact is improperly raised by appellant for the first time in his request. See, e.g., *In re Kroekel*, 803 F.2d 705, 708-09, 231 USPQ 640, 642-43 (Fed. Cir. 1986). We note in passing that appellant has not established in his request that the "Denver cell" used in Gatward does *not* prepare a "surfactant-enriched stream," which is "a stable-free-draining foam," and "a surfactant depleted stream," which is "surfactant-depleted liquid which is substantially free of entrained bubbles," as required by the method of appealed claim 93 as we have construed that claim in our original decision (pages 4-22).

We are also not convinced by appellant's contention that our decision is "inconsistent with the language as set forth in the specific claims that define the air bubbles as having a *range of 1 mm and 5 mm in size*" (request, page 2; emphasis added) since this statement does not correspond to the limitation "said bubbles being *predominantly between about 1 and about 5 mm in diameter*" (emphasis added) clearly stated in appealed claim 93 on which we have decided this appeal (original decision, pages 1-2 n.2).

Accordingly, we remain of the view that the claimed processes as encompassed by appealed claims 93 through 138

Appeal No. 94-0605  
Application 07/807,750

under 35 U.S.C. ' 103 are unpatentable over Gatward as applied in the ground of rejection of record.

We have granted appellants' request to the extent that we have reconsidered our decision of June 30, 1997, but we deny the request with respect to making any changes therein.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR '1.136(a).

*DENIED*

JOHN D. SMITH	)	
Administrative Patent Judge	)	
	)	
	)	
	)	
BRADLEY R. GARRIS	)	BOARD OF PATENT
Administrative Patent Judge	)	APPEALS AND
	)	INTERFERENCES
	)	
	)	
CHARLES F. WARREN	)	
Administrative Patent Judge	)	

Birch, Stewart, Kolasch & Birch  
P.O. Box 747  
Falls Church, VA 22040-0747